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04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 BRIAN K. JOHNSON,) CASE NO. C08-0232-RSM-MAT
07 Plaintiff,)
08 v.) ORDER GRANTING DEFENDANTS'
09 KING COUNTY JAILS, et al.,) MOTION TO COMPEL DEPOSITION
10 Defendants.) RESPONSES
11 _____)

12 This matter comes before the Court on defendants' motion to compel deposition responses
13 and for sanctions. Defendants' motion was precipitated by plaintiff's refusal to answer questions
14 about his substantive claims and about his damages at his original deposition on September 5,
15 2008.

16 It is beyond refute that defendants are entitled to conduct discovery in this action in any
17 manner provided for in the Federal Rules of Civil Procedure and that plaintiff is required to
18 cooperate in this effort. Rule 30 of the Federal Rules of Civil Procedure expressly provides for
19 the taking of depositions by any party of any other party. *See* Fed. R. Civ. P. 30(a). A deponent
20 may refuse to answer a question put to him during the course of a deposition only when necessary
21 to preserve a privilege or in other very limited circumstances not relevant here. *See* Fed. R. Civ.
22 P. 30(c)(2).

01 Plaintiff, during the course of his deposition, asserted his Fifth Amendment privilege
02 against self-incrimination as the basis for refusing to answer counsel's questions. However,
03 nothing in the record suggests that plaintiff would have incriminated himself by answering
04 counsel's questions pertaining to his substantive claims and his damages. Plaintiff therefore had
05 no right to refuse to answer counsel's questions.¹

06 Rule 37(a)(3)(b) of the Federal Rules of Civil Procedure expressly provides that a party
07 may move for an order compelling discovery where a deponent fails to answer a questions asked
08 under Rule 30. Rule 37 also provides that when a party fails to comply with its obligations under
09 the discovery rules, the court *must* require that party to pay the reasonable expenses, including
10 attorney's fees, caused by their failure unless the failure was substantially justified or other
11 circumstances make an award of expenses unjust. *See* Fed. R. Civ. P. 37(a)(5) and (d)(3).

12 Based upon the foregoing, the Court does hereby ORDER as follows:

13 (1) Defendants' motion to compel deposition responses (Dkt. No. 25) is GRANTED.
14 The discovery cutoff shall be extended for the sole purpose of allowing defendants to take
15 plaintiff's deposition. Defendants shall schedule that deposition to take place not later than
16 ***October 31, 2008.***

17 _____
18 ¹ Plaintiff's opposition to defendant's motion to compel was presented to the Court in the
19 form of a motion and was therefore placed on the Court's motion calendar. (*See* Dkt. No. 27 and
20 Dkt. No. 28 at 2.) Plaintiff's motion is more properly construed as a response to defendants'
21 pending motion and, thus, the motion is STRICKEN from the calendar. While the Court has
22 removed the motion from the calendar, it has nonetheless reviewed the arguments presented
therein. Unfortunately, those arguments are difficult to understand. Plaintiff references "time
constraints" in his response, but he fails to make clear how time constraints might justify the denial
of defendants' motion. The record reflects that defendants timely sought to take plaintiff's
deposition and plaintiff failed to cooperate. Defendants should have the opportunity to complete
that discovery despite the fact that the discovery deadline has now passed.

01 (2) Plaintiff is directed to SHOW CAUSE by the same date, **October 31, 2008**, why
02 sanctions should not be imposed for his failure to cooperate in the discovery process.

03 (3) Plaintiff's motion for summary judgment (Dkt. No. 29) is STRICKEN. Plaintiff
04 may re-file his motion once his deposition has been completed.

05 (4) Plaintiff's motion to proceed ex parte for summary judgment (Dkt. No. 28) is
06 DENIED. Plaintiff appears to be asking the Court to make copies of his summary judgment papers
07 and to serve those copies on defendants because plaintiff is indigent and cannot afford to make the
08 copies himself. While plaintiff has been granted leave to proceed with this action *in forma*
09 *pauperis*, his *in forma pauperis* status does not entitle him to have copies made at Court expense.
10 Plaintiff is responsible for making his own copies and for serving all documents on counsel for
11 defendants. Plaintiff is advised that hand-written copies are acceptable so long as they are
12 identical in content to the original filed with the Court.

13 (5) The dispositive motion filing deadline is extended to **November 28, 2008**. The
14 joint pretrial statement filing deadline is STRICKEN and will be re-set, if necessary, after any
15 dispositive motions have been ruled on.

16 (6) The Clerk shall send copies of this Order to plaintiff, to counsel for defendants, and
17 to the Honorable Ricardo S. Martinez.

18 DATED this 10th day of October, 2008.

19 
20 Mary Alice Theiler
21 United States Magistrate Judge
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